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### REMARKS

Claims 1-37 and 39-74 are pending in the present application. Reconsideration is respectfully requested for the following reasons.

Claims 1-8, 11-14, 20-23, 46-49 and 58-70 have continued to be indicated as being allowed. Furthermore, claims 29-33 have been indicated as being in condition for allowance. Applicant would like to thank the Examiner for that notification.

#### Claims 9, 10, 15, 17-19, 24, 26 and 57

Claims 9, 10, 15, 17-19, 24, 26 and 57 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,311,434 to Abe. "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of anticipation based upon the prior art. *In re Sun*, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Applicant respectfully asserts that the Examiner has not yet met his burden of establishing a prima facie case of anticipation with respect to the rejected claims.

Claim 9 defines a wind powered generator support assembly for supporting a wind powered generator including, among other things, a tower and a vertical elevator on the tower, with the elevator including a track and a carriage configured to move along the track, the carriage including a pivot ring configured to accept the wind powered generator therein for allowing the wind powered generator to rotate about the carriage, wherein the vertical elevator is configured to vertically lift the wind powered generator with the carriage to position the wind powered generator at a top of the tower.

The prior art of record does not disclose or suggest the above noted features of claim 9. Specifically, the Abe '434 patent does not disclose a vertical elevator on a tower including a track and a carriage configured to move along the track, with the carriage including a pivot ring configured to accept a wind powered generator therein. The Abe '434 patent discloses a thrust bearing 17 between a base 9 and a supporting member 6. According to the rejection of

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the claims, the Abe '434 patent discloses a carriage 12 and a pivot ring in the form of a roller bearing 17. However, as clearly illustrated in Figs. 1 and 2 of the Abe '434 patent, the mount 12 does not include the thrust bearing 17. Notably, in Fig. 1, the thrust bearing 17 is spaced from the mount 12. Therefore, the mount 12 does not include a pivot ring as claimed in claim 9. Moreover, according to the Office Action:

Regarding claims 9 and 19, Abe (US 4,311,434) shows in Figure 4 the carriage including the support 6 and the mount 12 that comprises the pivot ring 17. Therefore, the carriage includes the pivot ring as claimed. Regarding the circular shape of the ring examiner directs applicant's attention to column 3 lines 36-47 where Abe describes that the support 6 rotates relatively to the base 9 above the pivot 10 on the thrust bearing 17. One of ordinary skill in the art will appreciate that the bearing must be in a form of circle to allow such rotation.

However, Fig. 2 of the Abe '434 patent only discloses two spaced apart bearings 17. If the Office Action is stating that the element 17 in the Abe '434 patent is the pivot ring, Applicant submits that the carriage is not configured to be accepted within the bearing 17. If the Office Action is stating that the Abe '434 patent includes a plurality of bearings 17 in a form of a circle as the bearings 17 must be in a form of a circle to allow rotation, Applicant submits that the bearings do not need to be in a form of a circle to allow rotation. Only two bearings 17 are disclosed in Fig. 2 of the Abe '434 patent. Two bearings 17 would allow the supporting member 6 to rotate as the support member 6 is fixed in position by the vertical shaft 10. Therefore, the Abe '434 patent does not disclose that the bearings 17 are in the form of a circle or a ring. Furthermore, since the supporting member 6 is fixed to the shaft 10 and the shaft 10 is fixed to the base 9, the thrust bearings 17 would not have to be in the form of a circle or ring. See lines 25-28 of column 3 of the Abe '434 patent. Applicant notes that "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic." M.P.E.P. § 2112; *In re Rijchaert*, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). "In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. and Inter. 1990)

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(emphasis original). Therefore, since the Abe '434 patent does not disclose a pivot ring and a pivot ring does not necessarily flow from the teachings of the Abe '434 patent, the Abe '434 patent does not disclose a pivot ring as claimed in claim 9. Accordingly, claim 9 is in condition for allowance.

Claims 10, 15 and 17 depend from claim 9, and since claim 9 defines unobvious patentable subject matter, claims 10, 15 and 17 define patentable subject matter. Furthermore, in regard to claim 10, the prior art of record does not disclose or suggest a carriage including a first side groove configured to accept a first vertical strip and a second side groove configured to accept a second vertical strip. Specifically, the Abe '434 patent does not disclose that the mount 12 has any grooves or grooves accepting vertical strips. Furthermore, Applicant submits that a closed projection surrounding an element is not a "groove." Accordingly, claims 10, 15 and 17 are in condition for allowance.

Claim 18 defines a wind powered electrical generation system including, among other things, a tower including a vertical elevator, with the vertical elevator having a track and a carriage configured to move along the track, and a wind powered generator configured to be connected to the carriage, with the wind powered generator including a plurality of air foils and an electric generator, wherein the wind powered generator can be removably placed within the carriage after the tower has been erected and lifted vertically with the carriage to position the wind powered generator at a top of the tower and the wind powered generator can be removed from within the carriage after the carriage has been lowered.

The prior art of record does not disclose or suggest the above noted features of claim 18. According to the Office Action, the Abe '434 patent includes a carriage 12. As illustrated in Fig. 1, the carriage 12 includes a seat 15 having rails 16 thereon. The Abe '434 patent, however, does not disclose a wind powered generator that can be removably placed within a carriage and that can be removed from within a carriage. First, while the rotor and nacelle 2 may be replaced while the mount 12 is at a lower position, the structure as disclosed in the Abe '434 patent must be disassembled before anything can be removed. Therefore, the Abe '434 patent does not disclose a wind powered generator that can be removed after the mount 12 has been lowered. Second, the mount 12 does not have an area for accepting anything, much less

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the nacelle 2, the rotor head 4 or the rotor blade 5, therein. Accordingly, the Abe '434 patent does not disclose a wind powered generator that can be removed from within the carriage after the carriage has been lowered. In other words, the Abe '434 patent does not disclose anything removed from within the mount 12. Accordingly, claim 18 is in condition for allowance.

Claims 19 and 24 depend from claim 18, and since claim 18 defines unobvious patentable subject matter, claims 19 and 24 define patentable subject matter.

Furthermore, in regard to claim 19, the prior art of record does not disclose or suggest a carriage including a first side groove configured to accept a first vertical strip and a second side groove configured to accept a second vertical strip. Specifically, the Abe '434 patent does not disclose a carriage having grooves. The Abe '434 patent does not disclose grooves and grooves do not necessarily flow from the teachings of the Abe '434 patent, the Abe '434 patent does not disclose a carriage having grooves as claimed in claim 19. Furthermore, Applicant submits that a closed projection surrounding an element is not a "groove." Accordingly, claim 19 is in condition for allowance.

In regard to claim 24, the prior art of record does not disclose or suggest a carriage including a pivot ring configured to accept a wind powered generator therein. As discussed above in regard to claim 9, the Abe '434 patent does not disclose a carriage including a pivot ring or a carriage including a pivot ring configured to accept a wind powered generator therein.

Claim 57 defines a portable wind powered generation system including, among other things, a tower having an upper tower section and a lower tower section, the upper tower section and the lower tower section being removably connected, a wind powered generator and an elevator connected to the tower, the elevator being able to move between the lower tower section and the upper tower section of the tower. The wind powered generator is configured to be connected to the elevator to raise the wind powered generator from the lower tower section to the upper tower section. The wind powered generator can be unconnected from the elevator and the upper tower section can be unconnected from the lower tower section, thereby allowing the portable wind powered generator assembly to be easily transported and erected.

The prior art of record does not disclose or suggest the above noted features of claim

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57. Specifically, the Abe '434 patent does not disclose a tower having an upper tower section and a lower tower section, with the upper tower section and a lower tower section being removably connected. Furthermore, the Abe '434 patent does not disclose a wind powered generator that can be unconnected from an elevator and an upper tower section that can be unconnected from a lower tower section, thereby allowing the portable wind powered generator assembly to be easily transported and erected. Accordingly, claim 57 is in condition for allowance.

#### Claims 18 and 19

Claims 18 and 19 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,278,198 to Willis et al. "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of anticipation based upon the prior art. *In re Sun*, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Applicant respectfully asserts that the Examiner has not yet met his burden of establishing a prima facie case of anticipation with respect to the rejected claims.

Claim 18 defines a wind powered electrical generation system including, among other things, a tower including a vertical elevator, the vertical elevator having a track and a carriage configured to move along the track and a wind powered generator configured to be connected to the carriage. The wind powered generator includes a plurality of airfoils and an electric generator. The wind powered generator can be removably placed within the carriage after the tower has been erected and lifted vertically with the carriage to position the wind powered generator at a top of the tower. The wind powered generator can be removed from within the carriage after the carriage has been lowered.

The prior art of record does not disclose the above noted features of claim 18. Specifically, the Willis et al. '198 patent does not disclose a wind powered generator that can be removably placed within a carriage. Accordingly, claim 18 is in condition for allowance.

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Claims 19 and 71 depend from claim 18, and since claim 18 defines patentable subject matter as discussed above, claims 19 and 71 define patentable subject matter. Furthermore, the prior art of record does not disclose or suggest a carriage that is fixed to a track whereby a carriage continues to be connected to the track of the tower at a lowest point of travel of the carriage as defined in claim 71. Accordingly, claims 19 and 71 are in condition for allowance.

#### Claims 16 and 25

Claims 16 and 25 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the Abe '434 patent in view of U.S. Patent No. 6,239,507 to Douthitt. The requirements for making a *prima facie* case of obviousness are described in MPEP §2143 as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art. *In re Fritch*, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992); M.P.E.P. §2142. Applicant respectfully asserts that the Examiner has not yet met the Examiner's burden of establishing a *prima facie* case of obviousness with respect to the rejected claims. Consequently, the Examiner's rejection of the subject claims is inappropriate, and should be withdrawn.

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Claim 16 further defines the wind powered generator support assembly of claim 9 by stating that the carriage includes a plurality of contacts configured to contact a rotating portion of the wind powered generator to allow power to be transferred from the wind powered generator to a remote point.

The prior art of record does not disclose or suggest the claimed features of claim 16. First, claim 16 depends from claim 9, and since claim 9 defines patentable subject matter as discussed above, claim 16 defines patentable subject matter. Second, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings. According to the Office Action:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to design the tower as taught by Abe and to provide the carriage including the plurality of contacts contacting the rotating portion of the wind powered generator as taught by Douthit for the purpose of transferring the current from the generator to external storage or transmission means while allowing unlimited and free rotation of the generation about a vertical axis.

However, there is no suggestion or motivation for substituting the turntable 16 as disclosed in the Douthit '507 patent for the mount 12 disclosed in the Abe '434 patent. Such a combination would not allow the nacelle 2, rotor head 4 or rotor blades 5 of the Abe '434 patent to be raised or lowered because the turntable 16 as disclosed by the Douthit '507 patent could not move on the guides as disclosed by the Abe '434 patent. Therefore, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the Abe '434 patent with the Douthit '507 patent as set forth in the final rejection of the claims. In response to the above argument, the Office Action states:

In combination Abe and Douthit teach the invention as claimed. The detailed design of such system is a design choice that requires only routine skills in the art.

First, Applicant notes that it is impermissible within the framework of §103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one

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skilled in the art. *In re Wesslau*, 353 F.2d 238, 241, 147 USPQ 391, 393 (CCPA 1965); see also *In re Mercer*, 515 F.2d 1161, 1165-66, 185 USPQ 774,778 (CCPA 1975). Second, if a further modification or "a design choice" is needed to reject claim 16, the Abe '434 patent and the Douthit '507 patent do not teach the invention as claimed as set forth by the Examiner. Third, changing the function of a combination is more than a mere design choice and there must be some motivation or suggestion for making such a change. See *In re Chu*, 36 USPQ2d 1089 (Fed. Cir. 1995). Accordingly, claim 16 is in condition for allowance.

Claim 25 further defines the wind powered electrical generation system of claim 18 by stating that the carriage includes a plurality of contacts configured to contact the rotating portion of the wind powered generator to allow power to be transferred from the wind powered generator to a remote point.

The prior art of record does not disclose or suggest the claimed features of claim 25. First, claim 25 depends from claim 18, and since claim 18 defines patentable subject matter as discussed above, claim 25 defines patentable subject matter. Second, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings. According to the Office Action:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to design the tower as taught by Abe and to provide the carriage including the plurality of contacts contacting the rotating portion of the wind powered generator as taught by Douthit for the purpose of transferring the current from the generator to external storage or transmission means while allowing unlimited and free rotation of the generation above a vertical axis.

However, there is no suggestion or motivation for substituting the turntable 16 as disclosed in the Douthit '507 patent for the mount 12 disclosed in the Abe '434 patent. Such a combination would not allow the necelle 2, rotor head 4 or rotor blades 5 of the Abe '434 patent to be raised or lowered because the turntable 16 as disclosed by the Douthit '507 patent could not move on the guides 1a disclosed by the Abe '434 patent. Therefore, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one



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of ordinary skill in the art, to combine the Abe '434 patent with the Douthit '507 patent as set forth in the final Office Action. Furthermore, modifying the Abe '434 patent in view of the Douthit '507 patent is more than a mere "design change" as disclosed above regarding claim 16 and therefore is improper. Accordingly, claim 25 is in condition for allowance.

Claims 27, 28 and 34-37

Claims 27, 28 and 34-37 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the Abe '434 patent in view of U.S. Patent No. 4,374,631 to Barnes. The requirements for making a *prima facie* case of obviousness are described in MPEP §2143 as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art. *In re Fritch*, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992); M.P.E.P. §2142. Applicants respectfully assert that the Examiner has not yet met the Examiner's burden of establishing a *prima facie* case of obviousness with respect to the rejected claims. Consequently, the Examiner's rejection of the subject claims is inappropriate, and should be withdrawn.

Claim 27 further defines the wind powered electrical generation system of claim 18 by

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stating that the wind powered generator includes a housing, a rod configured to rotate within the housing and at least two spars connected to the rod and extending radially therefrom, wherein one of the airfoils is connected to each of the spars. Claim 27 depends from claim 18, and since claim 18 defines patentable subject matter as discussed above, claim 27 defines patentable subject matter. Accordingly, claim 27 is in condition for allowance.

Claim 28 further defines the wind powered electrical generation system of claims 18 and 27 by stating that the airfoils are configured to pivot about the spars and to slide longitudinally along the spars, with the airfoils being biased towards a first end of the spars connected to the rod, wherein each spar includes a cam member adjacent a second end of the spar opposite to the rod, wherein each airfoil includes a cam surface configured to engage the cam member on the spar, and wherein the cam member and the cam surface are configured to engage to thereby rotate the airfoils relative to the spars as the airfoils move along the spars towards the second end of the spars. Claim 28 depends from claims 18 and 27, and since claims 18 and 27 define patentable subject matter as discussed above, claim 28 defines patentable subject matter. Accordingly, claim 28 is in condition for allowance.

Amended claim 34 defines a wind powered generator including, among other things, a housing, a rod configured to rotate within the housing, at least two spars connected to a hub on the rod and extending radially therefrom, and an airfoil connected to each of the spars at a location distal the rod. The entire airfoil on each spar is configured to pivot about the spars and to slide longitudinally along the spars. The airfoils are biased towards a first end of the spars connected to the hub. Each spar includes a cam member adjacent a second end of the spar opposite to the hub. Each airfoil includes a cam surface configured to engage the cam member on the spar, wherein the cam member and the cam surface are configured to engage to thereby rotate the airfoils relative to the spars as the airfoils move along the spars towards the second end of the spars.

The prior art of record does not disclose or suggest the above noted features of claim 34. Specifically, neither the Abe '434 patent nor the Barnes '631 patent define an airfoil connected to a spar with the entire airfoil on each spar being configured to pivot about the spars and to slide longitudinally along the spars. Accordingly, claim 34 is in condition for

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allowance. Furthermore, claims 35-37 depend from claim 34, and since claim 34 defines unobvious patentable subject matter as discussed above, claims 35-37 define patentable subject matter. Accordingly, claims 34-37 are in condition for allowance.

Claims 39, 41-45, 50, 52 and 54-56

Claims 39, 41-45, 50, 52 and 54-56 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,110,631 to Salter in view of the Abe '434 patent. The requirements for making a *prima facie* case of obviousness are described in MPEP §2143 as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art. *In re Fritch*, 23 USPQ 2d 1780, 1783 (Fed. Cir. 1992); M.P.E.P. §2142. Applicant respectfully asserts that the Examiner has not yet met the Examiner's burden of establishing a *prima facie* case of obviousness with respect to the rejected claims. Consequently, the Examiner's rejection of the subject claims is inappropriate, and should be withdrawn.

Claim 39 defines a wind powered generator including, among other things, a housing, a rod configured to rotate within the housing and at least six spars connected to the rod and

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extending radially therefrom. An airfoil is connected to each of the spars at a location distal the rod and a generator is located upwind of the spars and interconnected to the rod, wherein the spars and the rod will rotate as wind passes the airfoils, thereby powering the generator.

The prior art of record does not disclose or suggest all of the above noted features of claim 39. In regard to the first criterion of obviousness, there is no suggestion or motivation, either in the references themselves or to one of ordinary skill in the art, to modify the reference as set forth in the Office Action. According to the Office Action:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to design the wind powered generator as taught by Salter and to provide the well known in the art configuration with the generator housing located upwind the rotor as taught by Abe since applicant did not disclose that such configuration solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with upwind or downwind configuration.

According to §2142 of the M.P.E.P.:

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985).

Furthermore, according to the same section:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

As discussed above, the Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. The initial burden is not on the Applicants to factually support a *prima facie* conclusion of non-obviousness. Furthermore, placing a generator upwind of a rotor in the Salter '631 patent would not work as well as a downwind generator as

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disclosed by the Salter '631 patent. The Salter '631 patent includes blades 19 fixed in position between a hub 18 and a rim 13. Furthermore, as illustrated in Fig. 2 of the Salter '631 patent, the blades 19 have a bottom side as illustrated in Fig. 2 that provides maximum rotation for the rotors. If wind was applied to the top of the blades 19 as illustrated in Fig. 2, which would happen if the generator was in an upwind configuration, the rotors would not turn as fast (if at all) and the efficiency of the system would be greatly reduced. Therefore, there is no suggestion or motivation to combine the Salter '631 patent with the Abe '434 patent as set forth in the Office Action, as any such combination would substantially reduce the efficiency of the resulting system. Accordingly, claim 39 is in condition for allowance.

Claims 41-43 depend from claim 39, and since claim 39 defines unobvious patentable subject matter as discussed above, claims 41-43 define patentable subject matter. Furthermore, in regard to claim 41, the prior art of record does not disclose or suggest a wind powered generator including a rod configured to be within a housing, at least six spars connected to the rod and an electrical generator connected to the housing. Specifically, the Salter '631 patent does not disclose a housing having a rod therein and being connected to an electrical generator as defined in claim 41. Therefore, a combination of the Salter '631 patent and the Abe '434 patent do not include all of the features of claim 41. Moreover, in regard to claim 42, the prior art of record does not disclose or suggest a vertical leg connected to a housing, wherein the housing is connected to an end of the vertical leg at a position off center from an axis of a vertical leg. Neither the Salter '631 patent nor the Abe '434 patent disclose or suggest a housing connected to a vertical leg at a position off center from an axis of the vertical leg. Accordingly, claims 41-43 are in condition for allowance.

Claim 44 defines a wind powered electrical generation system including, among other things, a tower including an elevator having a carriage, with the elevator being configured to move the carriage between a bottom and a top of the tower, a first member rotatably connected to the carriage, with the first member having an axis of rotation substantially parallel to the direction of movement of the carriage, a second member connected to the first member, with the second member having a first end and a second end, a hub assembly connected to the first end of the second member, with the hub assembly including a plurality of spars, an airfoil is

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connected to each spar, and a generator connected to the second end of the second member, wherein the spars and the second member will rotate as wind passes the airfoils, thereby powering the generator.

The prior art of record does not disclose or suggest the above noted features of claim 44. Specifically, according to the Office Action, the Salter '631 patent has been modified to have a generator housing located upwind of a rotor as taught by the Abe '434 patent. Accordingly, the combination as set forth in the Office Action does not include any tower including an elevator or a carriage. Accordingly, claim 44 is in condition for allowance.

Claims 45, 50, 52 and 54-56 depend from claim 44, and since claim 44 defines unobvious patentable subject matter as outlined above, claims 45, 50, 52 and 54-56 define patentable subject matter. As discussed above regarding claim 44, the combination of the Salter '631 patent and the Abe '434 patent as disclosed in the Office Action does not include any elevator, track or carriage such that claims 45, 50 and 52 are in condition for allowance. Furthermore, the combination of the Salter '631 patent and the Abe '434 patent does not disclose or suggest a second member connected to an end of a first member at a position off center from an axis of a first member as defined in claim 54. Finally, the combination of the Salter '631 patent and the Abe '434 patent as set forth in the Office Action does not include any airfoils that are configured to pivot about spars (as admitted in the Office Action during the rejection of claim 40). Accordingly, all claims 45, 50, 52 and 54-56 are in condition for allowance.

#### Claim 40

Claim 40 has been rejected under 35 U.S.C. §103(a) as being unpatentable over the Salter '631 patent in view of the Abe '434 patent and the Barnes '634 patent. The requirements for making a *prima facie* case of obviousness are described in MPEP §2143 as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art,

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to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art. *In re Fritch*, 23 USPQ 2d 1780, 1783 (Fed. Cir. 1992); M.P.E.P. §2142. Applicant respectfully asserts that the Examiner has not yet met the Examiner's burden of establishing a prima facie case of obviousness with respect to the rejected claims. Consequently, the Examiner's rejection of the subject claims is inappropriate, and should be withdrawn.

Claim 40 depends from claim 39 and further defines a wind powered generator by stating that the airfoils are configured to pivot about the spars and to slide longitudinally along the spars, and the airfoils are biased towards a first end of the spar connected to the hub. Each spar includes a cam member adjacent a second end of the spar opposite to the hub, and each airfoil includes a cam surface configured to engage the cam member on the spar. The cam member and the cam surface are configured to engage to thereby rotate the airfoils relative to the spars as the airfoils move along the spars towards the second end of the spars.

The prior art of record does not disclose or suggest the above noted features of claim 40. First, claim 40 depends from claim 39, and since claim 39 defines unobvious patentable subject matter as discussed above, claim 40 defines unobvious patentable subject matter. Second, there is no suggestion or motivation for combining the Salter '631 patent, the Abe '434 patent and the Barnes '631 patent as set forth in the Office Action. Specifically, the blades 19 as disclosed in the Salter '631 patent are fixed in position by a rim 13 and are not

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allowed to move outward relative to the central hub 18 because of the rim 13. Therefore, any blades in the combination as set forth in the Office Action would be prevented from rotating outward because of the rim 13 of the Salter '631 patent. Accordingly, claim 40 is in condition for allowance.

#### Claim 51

Claim 51 has been rejected under 35 U.S.C. §103(a) as being unpatentable over the Salter '631 patent in view of the Abe '434 patent and the Douthit '507 patent. The requirements for making a *prima facie* case of obviousness are described in MPEP §2143 as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art. *In re Fritch*, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992); M.P.E.P. §2142. Applicant respectfully asserts that the Examiner has not yet met the Examiner's burden of establishing a *prima facie* case of obviousness with respect to the rejected claims. Consequently, the Examiner's rejection of the subject claims is inappropriate, and should be withdrawn.



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Claim 51 depends from claim 44 and further defines the wind powered electrical generation system by stating that the carriage includes a plurality of contacts configured to contact a rotating portion of the first member to allow power to be transferred from a first member to a remote point.

The prior art of record does not disclose or suggest the above noted features of claim 51. First, claim 51 depends from claim 44, and since claim 44 defines nonobvious patentable subject matter as defined above, claim 51 defines patentable subject matter. Second, the combination of the Salter '631 patent and the Abe '434 patent does not disclose any carriage. Accordingly, a combination of the Salter '631 patent and the Abe '434 patent and the Douthit '507 patent as disclosed in the Office Action would not include any carriage. Accordingly, claim 51 is in condition for allowance.

#### Claim 53

Claim 53 has been rejected under 35 U.S.C. §103(a) as being unpatentable over the Salter '631 patent in view of the Abe '434 patent and the Barnes '631 patent. The requirements for making a *prima facie* case of obviousness are described in MPEP §2143 as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art

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also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art. *In re Fritch*, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992); M.P.E.P. §2142. Applicant respectfully asserts that the Examiner has not yet met the Examiner's burden of establishing a prima facie case of obviousness with respect to the rejected claims. Consequently, the Examiner's rejection of the subject claims is inappropriate, and should be withdrawn.

Claim 53 depends from claim 44 and further defines the wind powered electrical generation system by stating that the airfoils are configured to pivot about the spars and to slide longitudinally along the spars, and the airfoils are biased towards a first end of the spars connected to the hub. Each spar includes a cam member adjacent a second end of the spar opposite to the hub, and each airfoil includes a cam surface configured to engage the cam member on the spar. The cam member and the cam surface are configured to engage to thereby rotate the airfoils relative to the spars as the airfoils move along the spars towards the second end of the spars.

The prior art of record does not disclose or suggest the above noted features of claim 53. First, claim 53 depends from claim 44, and since claim 44 defines unobvious patentable subject matter as discussed above, claim 53 defines patentable subject matter. Furthermore, as discussed above in regard to claim 44, since the blades 19 of the Salter '631 patent are fixed in position by the rim 13, there is no suggestion or motivation for allowing the blades 19 to slide outward because they would not be able to move outward because of the rim 13. Accordingly, claim 53 is in condition for allowance.

#### Claim 57

Claim 57 has been rejected under 35 U.S.C. §103(a) as being unpatentable over the Abe '434 patent in view of U.S. Patent No. 5,244,326 to Ferguson. Claim 57 defines a portable wind powered generation system including, among other things, a tower having an upper tower section and a lower tower section, with the upper tower section and the lower

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tower section being removably connected, a wind powered generator and an elevator connected to the tower, the elevator being able to move between the lower tower section and the upper tower section of the tower, wherein the wind powered generator is configured to be connected to the elevator to raise the wind powered generator from the lower tower section to the upper tower section and wherein the wind powered generator can be unconnected from the elevator and the upper tower section can be unconnected from the lower tower section, thereby allowing the portable wind powered generator assembly to be easily transported and erected.

The prior art of record does not disclose or suggest the above noted features of claim 57. According to the Office Action:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to design the combined tower and to provide the tower comprising the lower tower section and the upper tower section as taught by Douthit for the purpose of providing a self containing system that is easy to transport and to install at site without the need of providing an additional crane or other hauling means.

Paragraph 17, Office Action mailed June 27, 2003. The rejection of claim 57 is not a *prima facie* case of obviousness because the final Office Action apparently uses teachings from a third reference, the Douthit '507 patent, without explaining which features of the Douthit '507 patent are taught. Furthermore, the final Office Action did not provide any suggestion or motivation for combining the Fergusson '346 patent with the Abe '434 patent, or even a combination of the Abe '434 patent and the Fergusson '346 patent. Nevertheless, there is no reason to combine the Abe '434 patent with the Fergusson '346 patent because if such a combination was made, the nacelle 2 of the Abe '434 patent would not be able to be raised and lowered along the guides 1a of the tower 1. As illustrated in Figs. 6 and 7 of the Fergusson '346 patent, the periphery of the upper section 225 of the frame 213 telescopes into the lower section 223 of the frame 213. Furthermore, the periphery of the upper frame 225 is smaller than the periphery of the lower section 223. Therefore, any guides used on the tower 213 as disclosed by the Fergusson '346 patent would not be colinear as the upper section 225 moves into the lower section 223. Therefore, if the guides 1a were not colinear, the mount 12 as disclosed in the Abe '434 patent would not be able to move up and down the frame.

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Accordingly, there is no suggestion or motivation for combining the Abe '434 patent and the Fergusson '346 patent.

In regard to the third criterion of obviousness, the prior art of record does not disclose or suggest the above noted features of claim 57. Specifically, even if there was a suggestion or motivation for combining the Abe '434 patent with the Fergusson '346 patent, the resulting combination would not include a tower having an upper tower section and a lower tower section removably connected. Furthermore, such a combination would not include a wind powered generator that can be unconnected from an elevator and a lower tower section that can be unconnected from an upper tower section. Accordingly, claim 57 is in condition for allowance.

#### Claims 72-74

New claims 72-74 are believed to define patentable subject matter.

#### Conclusion

All pending claims 1-37 and 39-74 are believed to be in condition for allowance, and a Notice of Allowability is therefore earnestly solicited.

Respectfully submitted,

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